

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Relay Services and)	
Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	CC Docket No. 98-67
)	
National Exchange Carrier Association)	
Payment Formula and Fund Size Estimate)	
Interstate Telecommunications Relay)	
Services (TRS) Fund for July 2004 Through)	
June 2005)	

AT&T COMMENTS

Pursuant to the Commission's May 4, 2004 Public Notice (DA 04-1258), AT&T Corp. ("AT&T") submits these comments on the annual payment formula and fund size estimate for the Interstate TRS Fund ("Fund") submitted on May 3, 2004 by the National Exchange Carrier Association ("NECA") in its capacity as the Fund administrator.

NECA proposes that the Commission adopt a \$1.349 per minute reimbursement rate for traditional interstate TRS and Internet protocol ("IP") relay calls. For speech-to-speech ("STS") relay, the filing proposes an interstate reimbursement rate of \$1.44 per minute. The reimbursement rate for video relay service ("VRS") proposed in NECA's filing is \$7.29 per minute. All of these proposed rates are lower than the reimbursement that is currently applicable for these services.

Additionally, NECA proposes a contribution factor of .000356 to be applied to carriers' end-user interstate and international revenues to produce a Fund of

\$289.4 million.¹ NECA states (at 2) that this “significantly higher” Fund size is attributable to the fact that, despite the proposed lower reimbursement rates, demand for IP relay and VRS is projected to increase even further.

I. The Proposed Reimbursement Rates Are Inadequate to Promote Continued Provision of High Quality, Innovative Relay Services and Choice of Providers.

NECA’s proposed 2004-2005 reimbursement rates exacerbate the serious concerns about the continuing viability of relay services that have already been repeatedly expressed by TRS providers, relay customers and numerous organizations representing the interests of persons with disabilities, and even by the Advisory Council that provides advice to NECA on interstate TRS cost recovery matters.² As these parties have stated in numerous formal pleadings and *ex parte* presentations to the Commission, even the current reimbursement levels provide inadequate incentives for TRS providers to incur the investment and other costs required to maintain the quality of existing relay offerings or to innovate additional features and employ new technologies to serve the estimated 24 million Americans with hearing and/or speech disabilities. Rather, current

¹ This development, which represents an increase of over \$118 million from the current Fund size, follows on the heels of an increase of over \$55 million for the balance of the 2003-2004 funding period. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, DA 04-465 (Consum. & Gov’t Aff. Bur.) released February 24, 2004.

² *See* NECA at 19 (“acknowledging the concerns” stated by Council members that the reimbursement rates proposed for all relay services “did not take into account the profit needs of [relay providers] and the needs of consumers,” and in particular that “a further reduction in the per-minute compensation for VRS will further degrade the availability and quality of th[at] service”).

reimbursement rates -- and the even lower rates NECA has now proposed -- create a compelling deterrent to offering higher quality, innovative relay service.

For example, in 2003 NECA proposed a reimbursement rate of \$14.023 per minute for VRS, which itself represented a significant decrease from the existing rate of \$17.044. Instead of reinstating that reimbursement rate, as parties including AT&T had urged,³ the Commission slashed the NECA proposed reimbursement level almost in half, establishing an “interim” rate of \$7.751 pending further examination of the costs of providing VRS.⁴ Predictably, immediately following that drastic reduction in the VRS reimbursement rate some VRS providers significantly curtailed their hours of operation for that service.⁵ The new proposed reimbursement rate of \$7.29 offers even less incentive for providers to deploy readily available, high quality VRS offerings.

Continued insufficient reimbursement levels for relay services (including, but by no means limited to, VRS) is also clearly antithetical to the objective of attracting new service providers to enter relay markets and, indeed, may promote decisions by some current providers to exit from some or all of their present service offerings. This result

³ See AT&T Comments filed May 22, 2003 in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67.

⁴ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, DA 03-2111 (Consum. & Gov’t Aff. Bur.) released June 30, 2003 (“*June 30 Order*”). AT&T and other parties filed petitions for reconsideration of the *June 30 Order*, which remain pending. The Commission has requested and obtained cost data from VRS providers but has not taken any formal action to address the “interim” ratesetting established in that decision.

⁵ See AT&T Reconsideration Petition filed July 30, 2003 in *id.*, at 10 n.24.

cannot be reconciled with the Congressional objective embodied in Title IV of the Americans with Disabilities Act to afford relay users with service that is “functionally equivalent” to services available to persons without hearing and/or speech disabilities. One of the key attributes of the services available to persons without those disabilities is the ability to choose from among a diverse body of providers offering a variety of prices and features. Insufficient reimbursement rates for relay services, such as those that have been proposed for the 2004-2005 period, operate to deprive persons with hearing and speech disabilities of these important benefits, and should not be adopted.

II. The Commission Must Eliminate Flowback of ILEC Fund Contribution

As AT&T showed (at 4-7) in its Comments on NECA’s 2003 proposed contribution factor and fund size, the Commission has rectified one source of impermissible implicit subsidies in access charges by precluding price cap LECs from “flowing back” their USF contributions to customers in access rates, and has waived other access rules to permit rate-of-return carriers to recover their USF contributions from end users. However, the Commission has not taken similar action to eliminate recovery of LECs’ Fund contributions from carrier access charges, despite the fact that the implicit subsidy created by that flowback is equally impermissible under statute and applicable precedent. AT&T accordingly requested that the Commission eliminate the LECs’ flowback in access rates of their Fund contributions as part of its 2003 counterpart to the present proceeding.

The *June 30 Order* (¶ 43) concluded that Commission review of contribution and Fund size proposals by NECA “is not the appropriate vehicle for addressing th[e] issues” regarding elimination of implicit subsidies through the LECs’

flowback through access charges of their Fund contributions. Nothing in that decision, however, questioned the Commission's legal duty to remove that subsidy from access rates. If the Commission continues to believe that this issue is beyond the scope of this proceeding, it is nevertheless obligated to address this matter in another appropriate forum. The need for such action is underscored by the growth in the Fund that is being spurred by increased demand for relay services, and the related increase in the amounts of Fund payments by the LECs that are flowed back through access charges. This unlawful subsidy should be eliminated by the Commission, either in a separate proceeding or as part of the comprehensive reform of intercarrier compensation that the Commission has indicated it will be commencing imminently.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tracy Lea Rudnicki, do hereby certify that on this 24th day of May 2004, a copy of the foregoing "AT&T Comments" was served by U.S. first class mail, postage prepaid, on the parties listed below.

/s/ Tracy Lea Rudnicki
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